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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,442	07/26/2001	Masanao Kohashi	074129-0485	4440
22428	7590	04/06/2004	EXAMINER	
FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			THOMPSON, CAMIE S	
		ART UNIT	PAPER NUMBER	1774

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/912,442	KOHASHI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Camie S Thompson	1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on Amendment filed February 9, 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,4-6 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,4-6 and 10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION**

1. Applicant's amendment and accompanying remarks filed February 10, 2004 have been acknowledged.
2. Examiner acknowledges amended claim 1.
3. Examiner acknowledges cancelled claim 9 and newly added claim 10
4. The rejection of claims 1, 4-6 and 9 under 35 U.S.C. 102(b) as being anticipated by Kim et al., U.S. Patent Number 5,472,781 is withdrawn due to applicant's argument.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4-6 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by McClary, U.S. Patent Number 4,414,169.

McClary discloses a polyester multifilament yarn comprising at least 90 mol percent of polyethylene terephthalate having an intrinsic viscosity of 0.85 dl/g as per instant claim 1 (see column 3, lines 50-68). The McClary reference discloses a birefringence of about 0.190 to 0.205 as per instant claim 10 (see column 12, lines 11-29). Additionally, the reference discloses that the monofilament linear density is in a range from about 2 to 3.5 dtex as per instant claim 1 (see Table A). The strength and strength x (breaking

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elongation)<sup>0.5</sup> of the polyester fiber comprising at least 90 mol percent of polyethylene terephthalate is greater than or equal to 6.0 cN/dtex and less than or equal to 26 cN/dtex%<sup>0.5</sup> respectively, as these are physical properties of polyethylene terephthalate with a monolinear density less than 5.0 dtex and an intrinsic viscosity of 0.85 dl/g. Therefore, the strength and strength x (breaking elongation)<sup>0.5</sup> are inherent for polyethylene terephthalate. Additionally, the main dispersion peak temperature of loss tangent in the measurement of dynamic viscoelasticity at 110 Hz is less than 147.0 deg C, as this is a physical property of the polyester terephthalate. Therefore, this feature is inherent. Column 16, lines 12-68 of the McClary reference discloses dipped cords made from the polyester fiber comprising polyethylene terephthalate as per instant claims 5-6. The tenacity conversion efficiency in the dip treatment and the elongation at a specific load + dry heat shrinkage would be expected to be greater than or equal to 96% and less than or equal to 7.5% respectively, as these are physical properties of the polyethylene terephthalate. Therefore, these features are inherent. Claims 5 and 6 are product-by-process claims. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art was made by a different process. The manner in which the dipped cord is made does not make it a different product. Both McClary and applicant use a polyester fiber comprising 90 mol percent or higher of polyethylene terephthalate with an intrinsic viscosity of 0.85 dl/g in the dipped cord. The dipped cord of the McClary reference is the same as applicant's. See MPEP 2113.

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7. Applicant's arguments with respect to claims 1 and 5-6 have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Camie S. Thompson whose telephone number is (571) 272-1530. The examiner can normally be reached on Monday through Friday from 7:30 am to 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia H. Kelly, can be reached at (571) 272-1526. The fax phone number for the Group is (703) 872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CYNTHIA H. KELLY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

